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OGC HAS REVIEWED.

Chief, EE

Administrative

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[Redacted] "Two Years Continuous Service Abroad"

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REFERENCE: [Redacted]

The Office of General Counsel has made the following determination regarding the effect of Leave Without Pay on "Two Years Continuous Service Abroad":

"Leave without pay in reasonable amounts can be granted an employee while serving overseas and such leave will not constitute a break in service. In concluding that such leave without pay must be added to the two years continuous service abroad, we look to the Comptroller General's decision No. B-933665, dated March 16, 1950, wherein the Comptroller stated in answer to the question whether the period of "continuous service abroad" must be extended beyond two years for a period equal to the amount of interim leave taken before the employee is entitled to home leave:

" . . . However, having in mind the evident intent of the law to relieve the hardship of prolonged absence from the United States, it appears reasonable to conclude that periods of annual or sick leave spent in the United States under the stated circumstances--while they need not be held to constitute a break in the continuity of service abroad--should not be counted as service abroad . . ." (Emphasis supplied)

While no mention is made in this opinion of the effect of periods of leave without pay, it is reasonable to assume that had it been at issue at the time, the same ruling would have applied. It is clear from this opinion and 27 Comp. Gen. cited therein, that the requisite which must be present before the rule laid down above, e.g. tacking leave time to continuous

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service, can be applied, is that the employee must be considered as being in "continuous employment". Since the use of leave without pay in this instance would only be for a reasonable time with the definite assurance of the employee's return to an active duty status, it can be considered that he is still in "continuous employment".

In arriving at what constitutes a reasonable time, it is necessary to look to some norm or standard. Such a standard is found in the definition of "continuous service" as applicable to the regulations promulgated by the Civil Service Commission. There it is stated that continuous service means an active duty status but may include not more than one break in service of less than 30 calendar days. Therefore, it would seem that leave without pay of less than 30 calendar days would not constitute a break in the continuity of service abroad and could be considered a reasonable time."

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EE/PER [redacted] 4 June 1953
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